

DEPARTMENT OF STATE REVENUE

**LETTER OF FINDINGS NUMBER: 96-0458 CSET
Controlled Substance Excise Tax
For Tax Period: 1992**

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ISSUE

1. CONTROLLED SUBSTANCE EXCISE TAX: DOUBLE JEOPARDY

Authority: IC 6-7-3-5; United States Constitution Amendments 5 and 14, Bryant v. State of Indiana (1995)(Indiana Supreme Court).

Taxpayer protests the assessment of Controlled Substance Excise Tax.

STATEMENT OF FACTS

Taxpayer was arrested on October 2, 1992 for the possession of Marijuana. A record of Jeopardy Finding, Jeopardy Assessment Notice and Demand for the Controlled Substance Excise Tax was issued on November 11, 1992. Taxpayer protested the assessment. Taxpayer was sentenced to the Indiana Department of Corrections in March, 1993. On July 11, 1996, the Department offered Taxpayer a settlement amount. Taxpayer never accepted the settlement amount. A hearing was scheduled for June 30, 1998. On May 18, 1998, Taxpayer called the Hearing Officer and discussed the hearing. Taxpayer did not appear for the hearing or send in any documentary evidence.

CONTROLLED SUBSTANCE EXCISE TAX: DOUBLE JEOPARDY

DISCUSSION

IC 6-7-3-5 imposes the Controlled Substance Excise Tax on the delivery and possession of Marijuana in the State of Indiana. The Fifth and Fourteenth Amendments of the United States Constitution prohibit placing any citizen in jeopardy twice for the same

action. Jeopardy attaches when a determination of guilt is made and a person is put at risk of punishment. Bryant v. State of Indiana (1995)(Indiana Supreme Court). In the instant case, Taxpayer was sentenced several months after the issuance of the jeopardy tax assessment. Therefore, the jeopardy tax assessment was the first and constitutionally protected jeopardy.

FINDING

Taxpayer's protest is denied.